

GST: Where Central Government after enactment of Central Goods and Services Tax Act, 2017 issued a notification dated 22-8-2017 notifying that 6 per cent of tax was leviable towards works contract and assessee made representation against said levy qua contracts executed prior to 1-7-2017, Competent Authority was directed to consider representation and pass orders on merits

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[2018] 92 taxmann.com 237 (Madras)

HIGH COURT OF MADRAS

Coimbatore Corporation Contractors Welfare Association

v.

State of Tamil Nadu*

**T.S. SIVAGNAM, J.
W.P. NO. 24852 OF 2017
OCTOBER 5, 2017**

Section 9 of the Central Goods and Services Tax Act, 2017 - Levy and collection of tax - Assessee, an association, was formed for welfare of members of road contractors - Works contractors used to remit 2 per cent tax on value for works executed by them towards works contract tax under Tamil Nadu Value Added Tax, 2006 - After enactment of Central Goods and Services tax Act, 2017 with effect from 1-7-2017, Central Government issued a notification dated 22-8-2017 notifying that 6 per cent of tax was leviable towards works contract - Assessee made representation stating that contract works for which agreements were executed prior to 1-7-2017, GST could not be imposed and 2 per cent VAT alone was applicable - Since representation had not been considered and no orders were passed, assessee filed writ petition - Whether Commissioner of Commercial Taxes was to be directed to consider representation given by assessee and pass orders on merits - Held, yes [Para 12] [Partly in favour of assessee]

Circulars and Notifications: Notification dated 22-8-2017

G.O. Ms. No. 264, Finance (Salaries) Department, dated 15-9-2017

FACTS

- The assessee, an association, was formed for the welfare of the members of the road contractors.
- The works contractors used to remit 2 per cent tax on value for the works executed by them towards the works contract tax under the Tamil Nadu Value Added Tax, 2006.
- After the enactment of the Central Goods and Services Tax Act, 2017 with effect from 1-7-2017, the Central Government issued a notification dated 22-8-2017 notifying that 6 per cent of the tax was leviable towards works contract.
- Therefore, the contractor would be liable to pay 12 per cent of tax, *i.e.*, 6 per cent under the Central GST Act and 6 per cent under State GST Act towards works

contract.

- Therefore, the assessee made representation stating that the contract works for which the agreements were executed prior to 1-7-2017, GST could not be imposed and 2 per cent VAT alone was applicable.
- Since the representation had not been considered and no orders were passed, the assessee filed writ petition.

HELD

- The Government Advocate has drawn the attention of the Court to G.O. Ms. No. 264, Finance (Salaries) Department, dated 15-9-2017. [Para 11]
- In the light of the stand taken by the respective parties, there will be a direction to the Commissioner of Commercial Taxes to consider the representation given by the assessee and pass orders on merits and in accordance with law. [Para 12]

S. Doraisamy for the Petitioner. **A. Sri Jayanthi**, Spl. Govt. Pleader and **K. Venkatesh**, Govt. Adv. for the Respondent.

ORDER

1. The petitioner is an association registered under the provisions of the Tamil Nadu Societies Act bearing Registration No.81/2012. The Association was formed for the Welfare of the members of the Road Contractors, who have been carrying on works for the National Highways and Highways department and other Governmental organisation.
2. The contractors used to remit 2% tax on value for the works executed by them towards the Works Contract Tax under the Tamil Nadu Value Added Tax, 2006 [hereinafter called as "the TNVAT] in terms of Section 6 of the TNVAT Act.
3. After the enactment of the Central Goods and Services Tax Act, 2017 with effect from 01-07-2017, certain problems have arisen, which has compelled the petitioner to submit representations to the respondent.
4. The petitioner would state that on 22-08-2017, the Central Government issued notification notifying that 6% of the tax is leviable by the Central Government towards Works Contract.
5. The State Government is empowered to levy towards works contract tax in addition to the works contract tax imposed by the Central Government. Therefore, the contractor would be liable to pay 12% of tax towards works contract.
6. Therefore, the petitioner/association made representations on 05-07-2017, 10-07-2017, 11-07-2017 and 11-09-2017 to the respondents stating that the contract works for which the agreements were executed prior to 01-07-2017 GST cannot be imposed and 2% VAT alone is applicable.
7. Alternatively the association stated that if the petitioners are compelled to pay anything over and above 2%, the respondent in addition to the value of the work done, has to remit the GST as per the notification, since the representations submitted by the petitioner/ association have not been considered and no orders were passed.
8. When the case came up for hearing on 18-09-2017, the petitioner was directed to implead the Secretary to Government, Commercial Taxes Department and the Commissioner of Commercial Taxes. Accordingly, an application was filed to implead and the same was ordered by order dated 20-09-2017.

9. Mr.K.Venkatesh, learned Government Advocate [Taxes] accepted notices for the newly impleaded respondents and it appears that he had personally spoken to the Commissioner of Commercial Taxes, from which, it is seen that the Government also is in the process of discussing as to how the modality has to be worked out and what is the relief petitioner/ association entitled to.

10. In any event, since the petitioner's representations are pending, it is appropriate for the respondent to respond to the same by giving them a reply. The appropriate person who would be in a position to give reply is that the Commissioner of Commercial Taxes shall give a reply. Because all other authorities are the department of Highways and National Highways etc., who would not be in a position to specifically address the issue pointed out by the petitioner.

11. The learned Government Advocate has drawn the attention of this Court to G.O. Ms.No.264, Finance [Salaries] Department, dated 15-09-2017. The operative portion of the Government Order reads as follows :—

"5. Under the new tax regime, GST (comprising CGST, SGST and IGST) on works contracts for Government work was intially notified at 18 percent. This had resulted in representations from contractors of ongoing works for compensation by procuring entity for increased tax liability over and above the contracted value of work. The difficulties arising out of increased GST on works contracts for Government work was deliberated in the GST Council Meetings held on 20th August 2017 and 9th September 2017. Consequently, the GST on works contracts for Government work is being reduced to 12 percent. This move more or less balances the taxes on works contracts in the pre GST and post GST regime.

6. Pending notification of guidelines in the matter, the Government now direct that all departments and procuring entitles shall made 'on account' payment of bills presented by contractors, restricting the payments to the value due as per existing contract agreements. Any difference on account of final payment due based on the guidelines to be issued and the 'on account' payment made as above may be adjusted from out of the 5 percent amount retained with procuring entity. The payment of final bill in cases where on account payments have been made shall be made only after the notification of the guidelines."

12. In the light of the stand taken by the respective parties there will be a direction to the Commissioner of Commercial Taxes to consider the representation given by the petitioner/ association and pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order.

13. The authorised representative of the petitioner/ association may be afforded an opportunity of personal hearing by the Commissioner. The petitioner/ association is directed to communicate the copies of the representation along with a copy of this order to the Commissioner of Commercial Taxes for due and effective compliance of the above directions.

s.k. jain

*Partly in favour of assessee.